

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION**

XCOAL ENERGY & RESOURCES, LP,)	
)	
Plaintiff,)	Case No. 2:07CV00057
)	
v.)	OPINION AND ORDER
)	
LANDON KELLER SMITH, ET AL.,)	By: James P. Jones
)	Chief United States District Judge
Defendants.)	

Michael G. Wilson and Thomas N. Jamerson, Hunton & Williams LLP, Richmond, Virginia, for Plaintiff; Steven R. Minor, Elliott Lawson & Minor, Bristol, Virginia, and Elsey A. Harris III, Mullins, Harris & Jessee, Norton, Virginia, for Defendants.

The defendants have moved to dismiss, pursuant to Federal Rule of Civil Procedure 12(b)(6), the plaintiff's Second Amended Complaint alleging commercial fraud. Earlier versions of the complaint were dismissed by the court for failure to comply with Rule 9(b). *See Xcoal Energy & Res., L.P. v. Smith*, No. 2:07CV00057, 2008 WL 312912 (W.D. Va. Feb. 4, 2008); *Xcoal Energy & Res., L.P. v. Smith*, No. 2:07CV00057, 2008 WL 746989 (W.D. Va. Mar. 20, 2008).

After careful consideration of the parties' arguments, I find that the Second Amended Complaint sufficiently complies with Rule 9(b). Accordingly, it is **ORDERED** that the Third Motion to Dismiss (#37) is DENIED.

ENTER: May 16, 2008

/s/ JAMES P. JONES
Chief United States District Judge